HI BOSS, DON'T SEND ME AN E-MAIL WHEN I SLEEP: IMPLEMENTATION OF "THE RIGHT TO DISCONNECT" INTO THE EU LAW

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ABSTRACT

Digitalisation has introduced new possibilities in the world of work. New work concepts are being developed as almost all communication is supported by the Internet, and work is often not strictly tied to a particular location. The impact of digitalisation has mostly positive effects, but also raises some questions regarding the need to be connected and the erosion of differences in time spent on work and free time. When work is performed from home, the separation of time does not exist. This problem took on a new dimension during the COVID-19 pandemic, when employers extensively introduced work-from-home arrangements for all employees as a solution to avoid office-based work. Working from home is often identified as having no set working hours, which can be beneficial, but only when the worker chooses to work from home and is, therefore, prepared to do so.

This paper will focus on the problem of digital facilities, primarily emails, that interfere with both work and personal life, allowing workers to remain "connected" to their jobs with no time or place limitations. This concerns the impact of e-mails and other digital innovations enabled by smartphones and tablets on labour conditions and the protection of workers' rights and health, which will be analysed through the existing case law and legislation in force. This right is commonly known as the "right to disconnect," and its introduction into national law is constantly growing.

This paper aims to raise awareness of the importance of the "right to disconnect" from digital facilities outside working hours, thereby protecting workers' rights and health.

***Keywords**: digitalisation, EU Law, workers' rights, right to disconnect*

1. INTRODUCTION

Digitalisation has engendered transformative shifts in the structure of labour relations and the modality of work execution. In the digital era, work is no longer confined to a specific location or time frame; instead, it exists within a continuum of connectivity where the boundaries between professional obligations and per-

sonal autonomy become increasingly indistinct. This techno-organisational shift has introduced opportunities for greater labour market access and flexibility and, simultaneously, significant concerns about overexposure to work demands and the erosion of rest periods and personal life.

The legal concept of the right to disconnect, which is the entitlement of employees to refrain from work-related digital communications outside of working hours without adverse consequences, emerged as a response to this encroachment upon workers' fundamental rights. It reflects a recognition of digital fatigue and the psychological burdens associated with ubiquitous connectivity. As noted by Lagutina,[1] the right encapsulates the demand for time sovereignty in a digital context where the line between rest and work is continually blurred.

While the traditional framework of EU labour law has focused on minimum protection and guarantees to rest, defining the maximum number of working hours and occupational, health, and social safety, the digital environment[2] has disrupted these protections, necessitating novel regulatory approaches. Recent literature[3] emphasises that regulation must evolve from task-based definitions of work toward time-based and autonomy-based protections.

The COVID-19 pandemic accentuated this regulatory lacuna. With telework becoming a widespread norm, the permeability between work and non-work spheres has intensified. Workers were expected to remain continuously available, not through explicit extensions of working hours, but through implicit expectations to respond to digital communications—emails, messages, and platform notifications—regardless of the time. The result has been a deterioration in mental health and the undermining of decent work as defined in international legal instruments. During this period, Studies throughout the EU reported rising burnout cases and the erosion of psychological detachment from work.[4]

This paper argues for the need to anchor the right to disconnect within the acquis of EU labour law, considering the evolving nature of work, particularly as structured by digital platforms and algorithmic governance. In pursuing this objective, the paper will analyse digital platform regulation, the experience of Member States and the jurisprudence of the Court of Justice of the European Union (CJEU). The

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1 Lagutina, I. V., *Right to Disconnect as One of the Employees' Digital Labour Rights*, Juris Europensis Scientia, Vol. 3, 2022, pp. 28–36.

2 Frosio, G. F., *Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy*, 112 NW. U. L. REV. ONLINE 18 (2017-2018), pp. 19-46.

3 Ginès A.; Fabrellas, *How to Ensure Employees' Well-being in the Digital Age?*, IDP, No. 35, 2022, pp. 4–6.

4 European Commission, *Study to Support the Impact Assessment of an EU Initiative to Improve the Working Conditions in Platform Work*, Brussels, 2021, p. 61.

aim is to advocate for a legally binding framework at the EU level to guarantee this emerging right. For the research, based on the selection of legal systems and jurisdictions, functional comparison of legal rules, institutions, or doctrines and analysis of similarities and differences will be prepared to answer which would be the most appropriate regulation.

2. THE IMPACT OF DIGITALISATION ON WORK-LIFE BALANCE

2.1. Structural Shifts in the Nature of Work

The digitalisation of labour has introduced a dual dynamic: on one hand, it provides greater flexibility and autonomy; on the other, it commodifies worker availability and erodes traditional boundaries of working time. The economics of digital platforms are driven by network effects, economies of scale, and data extraction as a commercial asset all of which contribute to workforce concentration and algorithmic management structures.[5] These systems increase labour fragmentation and shift risks to individual workers,[6] resulting in a structural extension of working hours without the legal safeguards typically afforded to dependent employees in the "regular"[7] employee-employer relation.

The best example of this shift is the platform work model. It is characterised by real-time, on-demand matching of labour supply and demand. However, workers are often incentivised to remain constantly available, as algorithms distribute work opportunities based on responsiveness. Consequently, workers may find themselves tethered to their devices, maintaining a perpetual state of readiness, which functionally extends their working time, without classification as paid overtime or guarantees of minimum rest periods.[8] Although the platform work is not always considered as a "regular" employee and employer form of work, it can be used as a model for the purpose of this article.

2.2. Work Intensity and Health Implications

The presence of smartphones, applications, and digital workspaces has effectively dismantled the spatial and temporal boundaries that once protected rest and pri-

5 de Groen, W., *et al, Digital Labour Platforms in the EU: Mapping and Business Models*, CEPS, Publications Office of the EU, Luxembourg, 2021, pp. 18–22.

6 Coveri, A.; Cozza, C.; Guarascio, D., *Monopoly Capitalism in the Digital Era*, RePEc, No.9 Research Papers in Economics, 2021

7 It is governed by labour law regulation and work contracts.

8 de Groen, *et al., op. cit.*, note 5, pp. 29–31.

vate life. This environment encourages constant connectivity, exacerbating legal ambiguity around working hours. Digital platforms often operate within regulatory grey zones, bypassing traditional labour law protections through the misclassification of workers and the exploitation of inconsistencies between national regulations.[9] This trend, often called the "uberisation"[10] of work, exemplifies the growing misalignment between platform-based labour models and the normative frameworks that govern occupational health and safety.

A growing body of empirical research links digital overexposure with negative health outcomes. Workers subjected to continuous algorithmic monitoring and availability requirements report higher stress levels, sleep disorders, and burnout. According to the European Trade Union Institute, platform workers, especially those in precarious or migrant conditions, suffer from low wages, unpredictable schedules, and restricted autonomy, all of which are detrimental to mental and physical health.[11]

2.3. Regulatory Implications

The challenges posed by digital labour platforms extend beyond individual employment contracts—they necessitate a shift in the regulatory perspective.[12] According to Nooren et al., attempts to regulate platform work through traditional labour law instruments are insufficient; instead, regulation must be tailored to the platform business model itself, accounting for the interplay of data, algorithms, and global labour dynamics.[13] The right to disconnect,[14] therefore, when analysing platform work, should not be seen merely as a discretionary labour protection but as an essential structural safeguard within a broader regulatory framework for the digital economy.

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9 Strowel, A.; Vergote, W., *Towards a Global Approach to Digital Platform Regulation*, Egmont Institute, Brussels, 2024, pp. 8–11.

10 Based on the model of the taxi company Uber. See more in Dumančić, K.: Krupka, Z.: Čavlek, N. *Strategies for Urban Evolution: Analysing the Effects of Airbnb and Uber Business Models on the Transformation of Post-industrial Societies,* in Lakušić, S., *et al* (eds.) The Reimagining of Urban Spaces: A Journey Through Post-Industrial Cityscapes, Springer, Cham (2024).

11 European Trade Union Institute, Work-Related Psychosocial Risks in Digital Labour Platforms, ETUI Report, Brussels, 2023, pp. 29–35.

12 Adamski, D., *Lost on the digital platforms:Europas legal travails with the digital single market*, Common Market Law Review, 55(3), pp. 719-751

13 Nooren, P. et al., The Platformisation of Work: Challenges for EU Regulation, Policy and Internet, Vol. 10, No. 2, 2018, pp. 166–187.

14 Golding, G., Introducing Australia's New Right to Disconnect, Labour Law Issues, University of Adelaide, vol. 10, no. 1, 2024

Moreover, the international landscape reflects increasing recognition of the social harms of unregulated digital labour. While Member States diverge in regulatory philosophy—from market-based self-regulation to sovereignty-led enforcement, there is an emerging consensus that unchecked digital work leads to social fragmentation and the erosion of private time. Coherent EU action must address these cross-border regulatory inconsistencies and embed the right to disconnect within the Union's labour and digital strategy.

3. THE CONCEPT OF THE RIGHT TO DISCONNECT

The right to disconnect has emerged as a normative response to the intensification of digital labour and the erosion of traditional boundaries between work and private life, supported by digital tools. This is dominated by the development of Internet communication supported by email correspondence and specifically by mobile phone technology. It refers to the employee's entitlement not to engage in work-related communications—such as answering calls, emails, or messages—outside of regular working hours without fear of reprisal or disciplinary consequences. Its conceptual foundation lies at the intersection of fundamental rights to health, privacy, and decent working conditions, as recognised in Article 31(1) of the Charter of Fundamental Rights of the European Union.[15]

Doctrinally, the right to disconnect is not novel but an extension of pre-existing labour protections reinterpreted in light of technological realities. Lagutina[16] proposes that the right encompasses three interdependent elements: first, the right to refrain from performing work beyond contractual hours; second, protection from adverse consequences for disconnecting; and third, the employer's proactive duty to establish conditions that ensure disconnection. These dimensions are rooted in the principles of work-life balance, occupational health, and the protection of personal autonomy.

Legal scholarship increasingly views the right to disconnect as a soft social aspiration and a justifiable entitlement. Fenoglio argues that the emergence of digital omnipresence has transformed the classical notion of subordination in labour law. Employers' control no longer relies on spatial supervision but on algorithmic tracking, real-time surveillance, and hyper-connectivity, which demand a re-conceptualisation of working and rest periods.[17]

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[15] Article 31(1) of the Charter of Fundamental Rights of the European Union: "Every worker has the right to working conditions which respect his or her health, safety and dignity."

[16] Lagutina, I. V., *Right to Disconnect as One of the Employees' Digital Labour Rights*, Juris Europensis Scientia, Vol. 3, 2022, pp. 28–36.

[17] Fenoglio, A., *Il tempo di lavoro nella new automation age: un quadro in trasformazione*, Rivista Italiana di Diritto del Lavoro, Vol. 37, No. 1, 2018, pp. 627–648.

From a regulatory standpoint, the right to disconnect can be seen as a protective countermeasure to Hesselberth's term the "regime of connectivism"—a socio-economic condition in which digital presence becomes a moral and economic imperative.[18] In this framework, the absence of response or online status may be interpreted as negligence, potentially affecting promotion, job stability, or algorithmic ranking. This dynamic places the burden of boundary enforcement on the worker, inverting traditional obligations of the employer to manage working time within legal limits.

The legal recognition of this right in several Member States reflects its growing acceptance as a component of modern labour law. Notably, the French Labour Code frames the right to disconnect as a topic of mandatory collective bargaining, thus embedding it in workplace governance. Other jurisdictions have adopted varying models, including statutory entitlements, guidance frameworks, and sectoral instruments. Nevertheless, the absence of harmonised EU legislation has produced regulatory fragmentation, undermining legal certainty and worker protection across borders.

The right to disconnect must therefore be understood as both a reactive measure—to address harms already inflicted by unregulated digital engagement—and a proactive right—that reaffirms the value of human dignity, rest, and mental health in the architecture of employment relations. In this sense, it is not merely a response to digitalisation but a legal articulation of the minimum conditions for sustainable and ethical work in the digital age.

4. NATIONAL PRACTICES ACROSS THE EU

Implementing the right to disconnect across EU Member States has been heterogeneous, reflecting diverse legal traditions, regulatory capacities, and labour market structures. While some countries have adopted binding legislation, others have preferred soft-law measures or delegated the matter to collective bargaining. This regulatory divergence has created a patchwork of protections with significant implications for cross-border consistency and the harmonisation of workers' rights under EU law.

4.1. France: From Collective Bargaining to Statutory Innovation

France is the pioneer in codifying the right to disconnect.[19] In 2016, the Loi Travail (Law No. 2016-1088) introduced a requirement for companies with more

[18] Hesselberth, P., *Discourses on Disconnectivity and the Right to Disconnect,* New Media & Society, Vol. 20, No. 11, 2018, pp. 1994–2010.

[19] Mettling, B.A., Transformation numérique et vie au travail, Rapport, Ministere de travaille, France, 2015.

than 50 employees to negotiate terms related to disconnection during mandatory annual collective bargaining on work-life balance.[20] Article L.2242-17 of the Code du travail institutionalises this obligation, encouraging employers and employee representatives to determine conditions for the exercise of disconnection and to implement awareness-raising mechanisms.

The French approach is notable for combining legal compulsion with contractual flexibility. While the law mandates negotiation, it does not prescribe a specific outcome, thereby preserving sectoral autonomy. This model embeds the right to disconnect within participatory workplace governance, rather than treating it as a static statutory entitlement.

4.2. Spain: A Data Protection Approach

Spain adopted the right to disconnect through Ley Orgánica 3/2018, which regulates the protection of personal data and digital rights. Article 88 recognises workers' right to disconnect in order to ensure respect for rest time, holidays, and personal and family life.[21] Unlike the French model, Spain frames disconnection primarily as a facet of digital privacy, situating it within the broader context of data protection.

This integration into information law signals a shift in the conceptual framing of labour protections in the digital age—acknowledging that privacy and rest are increasingly interdependent. However, the law essentially leaves implementation to internal company policies or collective bargaining, raising concerns about enforceability in weak-representation sectors.

4.3. Germany: Voluntary Corporate Policies and the Limits of Soft Law

Germany has not enacted a statutory right to disconnect. Instead, the German approach has relied heavily on internal corporate policies, social dialogue, and the normative framework provided by occupational health and safety legislation. Companies such as Volkswagen, BMW, and Deutsche Telekom have adopted internal disconnection rules that limit after-hours communication or restrict email server activity outside designated working hours.[22]

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[20] Article L.2242-17 of the Code du travail (France), inserted by Loi No. 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.

[21] Article 88 of Ley Orgánica 3/2018, de Protección de Datos Personales y garantía de los derechos digitales, Boletín Oficial del Estado No. 294, 6 December 2018.

[22] Eurofound, Right to Disconnect: Exploring Company Practices, Publications Office of the EU, Luxembourg, 2021, pp. 9–13.

These practices are often formalised through Betriebsvereinbarungen (works agreements) negotiated between employers and Betriebsräte (works councils) under the Betriebsverfassungsgesetz (Works Constitution Act). The Federal Ministry of Labour and Social Affairs has also issued guidance documents encouraging employers to respect work-life balance, but these remain non-binding.[23]

While this self-regulatory model has generated positive outcomes in large firms, its broader effectiveness is constrained by several factors. First, the absence of a universal statutory right means many employees remain unprotected, particularly in small or medium-sized enterprises. Second, enforcement depends on the strength of workplace representation, which varies significantly across sectors. Third, the cultural expectation of availability in competitive professional environments can override voluntary measures, especially in white-collar and knowledge-intensive industries.

Thus, Germany illustrates the limits of a soft-law, decentralised strategy in ensuring universal protection. Although the regulatory framework supports negotiated solutions, its reliance on company-level discretion creates legal asymmetry and can exacerbate inequality between well-organised and under-regulated workplaces.

4.4. Slovakia: A Cautious Experiment

Slovakia represents a more cautious and recent entrant to the right to disconnect debate. Amendments to the Slovak Labour Code in 2021 addressed telework arrangements and referred to disconnection in general terms. However, the legislation does not define the right concretely or impose binding obligations on employers.[24]

Bulla observes that the Slovak experience highlights the limits of legislative gesture without practical enforcement mechanisms. In contexts where collective bargaining coverage is low and employer awareness is limited, legal recognition alone may be insufficient to alter workplace behaviour or protect workers from digital overload.[25]

4.5. Fragmented Landscape

Overall, Member States can be categorised into three regulatory models: (i) statutory frameworks (e.g., France, Spain); (ii) collective bargaining-based models (e.g.,

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[23] Federal Ministry of Labour and Social Affairs (BMAS), Working Time Report Germany 2016, Berlin, 2017.

[24] Act No. 311/2001 Coll., Labour Code of the Slovak Republic, as amended by Act No. 76/2021.

[25] Bulla, M., *Legal Regulation of Remote Work in Slovakia and the Covid-19 Pandemic*, East European Journal of Transnational Relations, Vol. 5, No. 2, 2021, pp. 61–75.

Italy, Belgium); and (iii) non-binding or soft-law approaches (e.g., Germany, the Netherlands). This divergence undermines legal certainty and creates differential protections for workers depending on geographic location and sectoral representation.

The lack of EU-wide harmonisation also raises questions about the internal market. Workers in cross-border settings or transnational companies may face uneven conditions, while employers operating in multiple jurisdictions must navigate a complex regulatory mosaic. The European Commission has acknowledged this gap in its impact assessments, noting that divergent national practices hamper efforts to ensure consistent working time protections in the digital environment.[26]

5. COMPARATIVE INSIGHTS: FRANCE AND GERMANY

The experiences of France and Germany offer contrasting yet instructive approaches to implementing the right to disconnect. Both countries recognise the social risks associated with digital overexposure, but their regulatory strategies differ in structure, legal formality, and institutional reliance. Comparing these two models reveals the strengths and limitations of statutory versus soft-law approaches in safeguarding workers' digital boundaries.

5.1. France: Legislating Disconnection through Collective Dialogue

France stands as the leading example of a statutory right to disconnect, anchored in the Code du travail through the 2016 Loi Travail reforms. Article L.2242-17 requires employers with more than 50 employees to engage in annual negotiations regarding the modalities of disconnection, integrating it into broader discussions on work-life balance.[27] Although the law does not prescribe the content of these agreements, it establishes disconnection as a topic of mandatory collective bargaining.

This model presents several advantages. First, it grants the right to disconnect legal status, ensuring that workers have a formally recognised claim to disengage from work communications. Second, by embedding disconnection into collective bargaining, the law ensures that measures are tailored to sectoral and enterprise-specific contexts. Third, it fosters worker participation through the representative structures of délégués syndicaux (union delegates).

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[26] European Commission, Commission Staff Working Document: Impact Assessment Accompanying the Proposal for a Directive on Improving Working Conditions in Platform Work, Brussels, 2021, pp. 23–25.

[27] Article L.2242-17 of the Code du travail (France), inserted by Loi No. 2016-1088 du 8 août 2016.

However, the French approach is not without shortcomings. As the implementation is decentralised and outcome-dependent, the actual content of disconnection agreements varies significantly. In some enterprises, this results in robust policies and technical safeguards (e.g., email deactivation after hours), while in others it may yield little more than symbolic statements.[28] Moreover, enforcement mechanisms remain limited, especially in companies lacking strong union representation.

5.2. Germany: The Corporate Autonomy Model

By contrast, Germany has opted for a voluntary, decentralised, and largely employer-led framework. There is no general statutory right to disconnect under German federal law. Instead, companies such as Volkswagen, BMW, and SAP have introduced internal disconnection policies through works agreements (Betriebsvereinbarungen) negotiated with employee representatives pursuant to the Betriebsverfassungsgesetz (Works Constitution Act).[29]

These agreements often include restrictions on the sending or receipt of work emails outside normal business hours, encouragement of respect for employees' rest periods, and awareness campaigns promoting digital well-being. While these initiatives signal corporate responsibility and cultural change, they are not mandatory, nor uniformly implemented across sectors.

The German model reflects a broader philosophy of industrial democracy and corporate self-regulation. It allows tailored, context-specific solutions through co-determination and promotes managerial innovation in workplace policy. Yet, this very flexibility also entails the absence of universal protection. Employees in smaller firms or in sectors without strong Betriebsräte may remain entirely unprotected.[30]

Moreover, studies indicate that even in firms with disconnection policies, a workplace culture of availability persists. As work intensification increases—particularly in white-collar, high-responsibility roles—voluntary policies often fail to dislodge implicit expectations of responsiveness.[31]

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[28] Lerouge, L.; Trujillo Pons, F., C*ontribution to the Study on the Right to Disconnect from Work: Are France and Spain Examples for Other Countries and EU Law?*, European Labour Law Journal, Vol. 13, No. 3, 2022, pp. 450–465.

[29] Eurofound, Right to Disconnect: Exploring Company Practices, Publications Office of the EU, Luxembourg, 2021, pp. 9–13.

[30] Federal Ministry of Labour and Social Affairs (BMAS), Working Time Report Germany 2016, Berlin, 2017.

[31] Gines i Fabrellas, A., How to Ensure Employees' Well-being in the Digital Age?, IDP, No. 35, 2022, pp. 7–11.

5.3. Legal Certainty vs. Cultural Flexibility

The juxtaposition of France and Germany reveals a trade-off between legal certainty and cultural flexibility. The French model offers clearer statutory guarantees and a harmonised national baseline but depends heavily on effective bargaining structures. The German model empowers enterprises to innovate and align policies with specific needs but lacks universal coverage and enforceability.

Both systems implicitly acknowledge the changing nature of work in the digital age, but their effectiveness hinges on the strength of social dialogue and institutional support. From a comparative EU perspective, these two cases illustrate the importance of balancing regulatory minimum standards with enterprise-level autonomy.

Ultimately, these national experiments offer valuable insights for EU-level harmonisation. A future directive on the right to disconnect could draw from both: mandating a minimum standard across Member States, while preserving the flexibility to tailor implementation through collective agreements or sectoral protocols.

6. EU LEGAL FRAMEWORK AND COURT PRACTICE

The right to disconnect is not yet explicitly enshrined in EU primary or secondary legislation. However, several existing legal instruments and interpretive developments in the case law of the Court of Justice of the European Union (CJEU) provide a normative basis from which such a right could be derived. These include provisions on working time, health and safety, and fundamental rights under EU law.

6.1. Existing Legal Frameworks

The most relevant secondary law is the Working Time Directive (Directive 2003/88/EC), which establishes rules on minimum daily and weekly rest periods, maximum working hours, and paid annual leave. Article 3 requires Member States to ensure that workers are entitled to a minimum daily rest period of 11 consecutive hours in every 24-hour period. However, the Directive does not address the role of digital communication in undermining such rest, nor does it provide mechanisms to enforce disconnection from ICT tools outside working hours.[32]

[32] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L299/9.

The framework Directive on Health and Safety at Work (Directive 89/391/EEC) obliges employers to assess and manage workplace risks, including psychosocial risks such as stress and burnout. In this context, continuous digital engagement could be considered a risk factor under Article 6, requiring preventive measures.[33] Yet, this Directive has rarely been invoked explicitly concerning digital overexposure.

At the constitutional level, Article 31(1) of the Charter of Fundamental Rights of the European Union affirms that "every worker has the right to working conditions which respect his or her health, safety and dignity." This provision is increasingly cited in academic and policy debates as a foundation for recognising the right to disconnect as a fundamental component of decent work in the digital age.[34]

6.2. Relevant CJEU Case Law

While the CJEU has not yet ruled directly on the right to disconnect, its jurisprudence on working time and rest periods provides strong interpretive support for such a right. Two key cases are instructive.

In this landmark judgment C-518/15 Ville de Nivelles v Matzak,[35] the CJEU ruled that standby time during which a worker is required to remain physically present at a location determined by the employer must be regarded as "working time" under the Working Time Directive.[36] The Court emphasised that constraints imposed by the employer on the worker's freedom of movement and use of time were determinative in this classification. Although the case involved physical presence, the logic of the ruling suggests that digital tethering—such as being required to respond to emails or remain contactable—could similarly amount to working time where it significantly limits personal autonomy.[37]

In case C-55/18 Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank, the CJEU required Member States to oblige employers to establish objective, reliable, and accessible systems for recording actual working

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33 Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183/1.

34 Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art. 31(1).

35 Case C-518/15 *Ville de Nivelles v Rudy Matzak* [2018] ECLI:EU:C:2018:82-

36 *Ibid.,* para. 60.

37 Garcia-Muñoz Alhambra, M. A.; Hiessl, C., T*he Matzak judgment of the CJEU: The concept of worker and the blurring frontiers of work and rest time*, European Labour Law Journal, vol. 10, No. 4, 2019., pp. 343 – 352.

time.[38] The Court reasoned that without such systems, ensuring compliance with workers' rights under the Working Time Directive would be impossible. This case reinforces the argument that monitoring digital engagement is essential to enforcing rest and disconnection. It also implies that employers have a positive duty to implement systems capable of distinguishing between working and non-working time—an obligation that becomes urgent in the context of remote and flexible work arrangements.

6.3. Implications for EU Legislation

These rulings indicate a juridical shift in EU labour law from a narrow, physical understanding of work to a more functional, time-based conception that aligns with digital realities. They provide interpretive support for an EU legislative initiative on the right to disconnect, grounded in the need to give practical effect to minimum rest periods and the right to dignity at work.

The European Parliament has recognised this need in several resolutions, calling for a directive that explicitly grants all workers the right to disconnect, ensures enforcement, and prohibits adverse consequences for exercising this right.[39] While the Commission has so far refrained from proposing such legislation, citing subsidiarity concerns, pressure continues to mount from trade unions, civil society, and certain Member States.

7. REGULATORY CHALLENGES AND THE ROLE OF PLATFORM WORK

While the right to disconnect is gaining traction in traditional employment contexts, it faces unique and intensified challenges within platform work. Digital labour platforms[40]—such as ride-hailing, food delivery, or online freelancing—have reconfigured the contours of the employment relationship by introducing algorithmic management,[41] fragmented contractual structures, and disguised subordination. These features complicate both the enforcement and conceptual application of the right to disconnect.

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38 Case C-55/18 *Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank* [2019] ECLI:EU:C:2019:402, para. 45.

39 European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2020/2121(INL)).

40 Coyle, D.; Yeung, T.Y-C., *Understanding AirBnB in Fourteen European cities*, The Jean-Jacques Laffont digital chair, Working papers, 2017.

41 Afina, Y., *et al., Towards a Global Approach to Digital Platform Regulation,* Egmont Institute, Brussels, 2024, pp. 11–13.

7.1. The Challenge of Misclassification and Fragmented Responsibility

A significant regulatory obstacle stems from the widespread misclassification of platform workers as independent contractors. This status often excludes them from the protections afforded to employees under national labour law and EU directives, including working time regulation and occupational health standards. Without a recognised employment relationship, platform workers are ineligible to assert any statutory or collectively bargained right to disconnect—even where they are functionally dependent on a single platform for their livelihood.[42]

Platform business models distribute managerial functions through algorithms that allocate tasks, monitor performance, and penalise unavailability. As a result, control over working time is indirect yet pervasive, and the lines between rest and work are deliberately blurred. Workers are incentivised to maintain continuous availability to maximise visibility and earnings, tethering them to the platform without formal scheduling obligations.[43]

This creates a condition of "digital piecework", where the worker is neither formally on nor off duty, yet remains perpetually responsive to the logic of algorithmic management. In such conditions, the traditional legal categories of working time, rest periods, and overtime lose operational clarity, challenging the enforcement of any protective time-bound right.[44]

7.2. Algorithmic Governance and the Psychology of Availability

The psychological effects of algorithmically structured work further complicate regulatory responses. Workers on platforms are exposed to performance ratings, task prioritisation, and payment thresholds, all of which depend on metrics of responsiveness. The constant possibility of receiving a task creates a "gamified" labour environment that fosters anxiety, overcommitment, and sleep disruption.[45]

Unlike conventional employment, where expectations of availability are set by contract or employer directives, platform work introduces a self-managed pres-

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42 European Commission, Study to Support the Impact Assessment of an EU Initiative to Improve the Working Conditions in Platform Work, Brussels, 2021, pp. 46–52.

43 Dasgupta, S.; Williams, M., *Digital Labour Platforms in the EU: Mapping and Business Models*, Publications Office of the EU, Luxembourg, 2021, pp. 31–34.

44 Afina, Y., *et al., op. cit.,* note 41, pp. 11–13.

45 European Trade Union Institute, Work-Related Psychosocial Risks in Digital Labour Platforms, ETUI Report, Brussels, 2023, pp. 33–38.

sure[46] to remain connected. This produces what Hesselberth terms connective obligation—a moral and economic imperative to be reachable at all times, regardless of formal scheduling.[47] In this environment, disconnection becomes difficult and counterproductive to economic survival.

7.3. The Situation in Croatia

Croatia, like many Member States, has not yet introduced a statutory right to disconnect. The Croatian Labour Act regulates working hours, rest periods, and telework, but does not explicitly address disconnection from digital communications outside of working time. While employers may introduce internal policies to manage ICT use, there is no obligation to do so under national law. Grgurev and Potočnjak examine various aspects of remote work, including the use of ICT and the possibility of regulating worker availability. Their analysis is relevant for understanding how digital communication challenges the distinction between working time and rest periods.[48]

Bilić explores legal aspects of remote work and telework from international, European, and Croatian perspectives, with emphasis on the need for more robust regulation of digital availability. Although the right to disconnect is not codified as a separate legal entitlement in Croatian law, several legal provisions in the Labour Act (Zakon o radu)[49] and related legislation support its underlying principles: Article 8 of the Labour Act protects the dignity and privacy of the worker during the employment relationship, providing a basis for limiting employer interference in private time. Additionally, articles 44 and 46 define limits on working hours and prescribe daily and weekly rest periods, thereby indirectly affirming the importance of uninterrupted personal time. Article 17 prohibits discrimination based on private life and mental health, and Article 17a obliges employers to ensure adequate conditions in remote work settings. The Occupational Health and Safety Act[50] obliges employers to prevent psychosocial risks, which may include overexposure to digital communication outside working hours.

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46 Busch, C., *The Sharing economy at the CJEU: Does Airbnb pass the „Uber test"?,* EUCML, Issue 4/2018, 2018, pp. 172-174.

47 Hesselberth, P., *Discourses on Disconnectivity and the Right to Disconnect*, New Media & Society, Vol. 20, No. 11, 2018, pp. 1996–1998.

48 Grgurev, I.; Potočnjak, Ž., *Unaprjeđenje zakonskog uređenja rada na daljinu*, Zbornik 59. susreta pravnika.
Zagreb: Hrvatski savez udruga pravnika u gospodarstvu, 2021, pp. 281-310.

49 Zakon o radu, Narodne novine, br. 93/2014, 127/2017, 98/2019, 151/2022.

50 Zakon o zaštiti na radu [Occupational Health and Safety Act], Official Gazette, No. 71/14, 118/14, 154/14, 94/18, 96/18, art. 5.

While these provisions do not establish a right to disconnect per se, they may be interpreted in a way that supports it, particularly in collective agreements or internal employer regulations. Analysing the systematic concept of the right to disconnect involves identifying its key components (the right to disconnect, protection from adverse consequences for not responding, and the employer's obligation to support its use. The right should apply to all workers, not only those formally engaged in remote work.[51] A broader interpretation of the right to rest and privacy, emphasising psychosocial risks and the right to health protection in the context of permanent digital connectivity, should be taken into consideration. According to the same author, the book often offers the most comprehensive legal overview and proposes a regulatory pathway that combines statutory reform and collective bargaining mechanisms.[52]

Croatia faces the same challenges of legal ambiguity and enforcement fragmentation in the context of platform work. Platform workers typically operate under service contracts and lack access to collective bargaining or judicial remedies. The absence of a national disconnection standard disproportionately affects these workers, leaving them exposed to exploitative forms of availability.[53]

8. RECOMMENDATIONS FOR EU-WIDE IMPLEMENTATION

The fragmented landscape of national regulations on the right to disconnect reveals the need for coordinated action at the EU level.[54] While subsidiarity allows Member States discretion in the organisation of labour law, certain minimum protections—particularly in cross-border digital contexts—require harmonisation to ensure a level playing field and safeguarding fundamental rights. A coherent EU initiative on the right to disconnect should be guided by both legal obligation and policy innovation.

The EU possesses a clear legal basis to legislate in this field under Article 153(1) TFEU, which empowers the Union to support and complement Member States' activities in improving working conditions, ensuring worker health and safety, and promoting social dialogue.[55] A directive would be the appropriate instrument, as it would allow for harmonised minimum standards while preserving national and sectoral flexibility in implementation.

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51 Laleta, *op. cit.*

52 *Ibid.*

53 Zakon o radu, Official Gazette, No. 93/14, 127/17, 98/19, 151/22 (Croatian Labour Act).

54 ELI Guiding Principles on Implementing Workers' Right to Disconnect, Report of the European law institute, Vienna, 2023.

55 Article 153(1)(a) and (b) TFEU.

Such a directive should expressly articulate the right to disconnect as a fundamental labour right, anchored in Article 31(1) of the EU Charter of Fundamental Rights and supported by the purpose and logic of the Working Time Directive (2003/88/EC).[56] It should be applicable to all workers—regardless of sector or contractual status—reflecting the principle of equal treatment and the functional definition of employment endorsed by the CJEU.[57]

To ensure practical enforcement and meaningful protection, an EU directive on the right to disconnect should include clear definition of the right to disconnect as the freedom from digital work-related communication outside contractual working hours, without adverse employment consequences and employer obligations to adopt internal policies, in consultation with worker representatives, outlining procedures for disconnection, awareness-raising, and technological safeguards (e.g., server shutdown, delayed email delivery). Also, the document should be followed by enforcement mechanisms, including monitoring by national labour inspectorates and access to individual and collective redress.[58] Although the right to disconnect is mainly based on psychological protection and protection against reprisal, making it unlawful for employers to penalise or disadvantage employees who assert their right to disconnect is of importance to protect employees' rights.

Extension to platform work, ensuring that digitally managed workers—whether employees or not—are covered through rebuttable presumptions of employment or algorithmic accountability provisions.[59]

8.1. Promoting a Culture of Disconnection

Legal mandates alone are insufficient to shift entrenched workplace cultures of overconnectivity. The directive should be accompanied by soft-law measures, including:

EU-level guidelines on best practices for digital communication boundaries,[60] social partner involvement in shaping sectoral protocols, especially in high-intensity

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[56] Directive 2003/88/EC concerning certain aspects of the organisation of working time [2003] OJ L299/9.

[57] See Case C-55/18 Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank [2019] ECLI:EU:C:2019:402, para. 45.

[58] European Commission, Study to Support the Impact Assessment of an EU Initiative to Improve the Working Conditions in Platform Work, Brussels, 2021, pp. 76–80.

[59] Ginès A. i Fabrellas, How to Ensure Employees' Well-being in the Digital Age?, IDP, No. 35, 2022, p. 12.

[60] Eurofound, Right to Disconnect: Exploring Company Practices, Publications Office of the EU, 2021, pp. 19–22.

industries (e.g., tech, finance, healthcare), iIntegration with the European Pillar of Social Rights, particularly Principle 10, which affirms the right to a healthy, safe, and well-adapted work environment[61] and support for collective bargaining, particularly in Member States with weaker representation structures.

In implementing these obligations by producing methodological tools, risk assessments, and awareness campaigns tailored to diverse workplace realities, The European Agency for Safety and Health at Work (EU-OSHA) and Eurofound could support Member States.

8.2. Building Algorithmic Transparency

A forward-looking directive must address the digital governance layer of the modern workplace. Disconnection policies are ineffective if the underlying management systems remain opaque. Therefore, the right to disconnect must be linked to provisions on: algorithmic transparency, requiring platforms and employers to disclose how availability and responsiveness are monitored and rewarded;[62] human-in-command obligations, ensuring that work allocation and performance tracking do not rely solely on automated decision-making; and data protection, aligning with the General Data Protection Regulation (GDPR) to guarantee that digital activity tracking respects privacy and necessity principles.[63]

Embedding the right to disconnect within this broader digital regulatory framework ensures its relevance not only in traditional employment, but also in platform work and the evolving gig economy.

Finally, the transnational nature of many digital platforms poses enforcement challenges. Regulatory frameworks remain confined to national jurisdictions, while platforms operate across borders. This mismatch hinders effective oversight and creates regulatory arbitrage opportunities, whereby companies base operations in jurisdictions with weaker labour protections.

An EU-wide initiative on the right to disconnect would mitigate these discrepancies by harmonising minimum standards and ensuring protection across all forms of employment. However, implementation in the platform economy would also require rethinking employment classification, algorithmic transparency, and access to representation.

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61 European Pillar of Social Rights, Interinstitutional Proclamation [2017] OJ C428/10.

62 Nooren, P. *et al., The Platformisation of Work: Challenges for EU Regulation*, Policy and Internet, Vol. 10, No. 2, 2018, p. 177.

63 Regulation (EU) 2016/679 (General Data Protection Regulation), [2016] OJ L119/1, arts. 5 and 22.

9. CONCLUSION

The digitalisation of work has introduced profound opportunities and equally significant risks. While new technologies have facilitated flexible work arrangements and increased accessibility to employment, they have also dissolved the traditional boundaries that separated professional responsibilities from private life. The resulting phenomenon of constant availability, whether implicit or enforced, poses critical challenges to health, dignity, and fundamental labour rights.

The right to disconnect has emerged as a normative and practical response to these challenges. Initially articulated through national implementation in France and Spain, and increasingly debated across Member States, the right reflects a growing awareness of the psychosocial and legal harms of digital overexposure. In parallel, soft-law initiatives and corporate policies—particularly in Germany—demonstrate that while useful, voluntary action is insufficient to ensure universal and enforceable protection standards.

This paper has demonstrated that the EU legal framework, though not yet explicitly inclusive of the right to disconnect, contains foundational principles upon which it can be built. These include the Working Time Directive, the Health and Safety Framework Directive, and Article 31(1) of the Charter of Fundamental Rights of the European Union. Moreover, CJEU case law has begun to evolve toward a functional and time-sensitive conception of working time, opening interpretive space for the legal recognition of disconnection as a right.

The situation is particularly acute in the platform economy. Algorithmic governance, ambiguous employment status, and transnational operations challenge the tools that national regulators have traditionally relied upon. Without explicit legal recognition and enforceable rights, platform workers remain exposed to a regime of hyper-availability in which refusal to connect equates to economic exclusion.

This fragmented regulatory landscape justifies EU-level legislative intervention. An EU directive on the right to disconnect—anchored in Article 153 TFEU—would harmonise minimum protections, promote legal certainty, and affirm the Union's commitment to upholding dignity in the digital age. Such a directive should not only define the right to disconnect but also impose employer obligations, protect against reprisal, and extend coverage to digitally managed labour.

The future of decent work in the EU will increasingly depend on the Union's capacity to anticipate and address structural risks associated with digital labour. The right to disconnect offers a concrete and timely starting point for reconciling technological progress with social justice.

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